

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:

**HOLT DEVELOPMENT CO., LLC, and
DANNIE R. HOLT**

RESPONDENTS

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**DIVISION OF WATER
POLLUTION CONTROL**

CASE NUMBER WPC07-0136

COMMISSIONER'S ORDER AND ASSESSMENT

NOW COMES James H. Fyke, Commissioner of the Tennessee Department of Environment and Conservation, and states:

PARTIES

I.

James H. Fyke is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Commissioner" and the "Department" respectively).

II.

Holt Development Co., LLC, (hereinafter "Respondent Holt Development") is an active company licensed to conduct business in the state of Tennessee, and is the developer of Pleasant View Village, a residential subdivision on Highway 41 in Cheatham County (hereinafter "the site"). Service of process may be made on Respondent Holt Development through Dannie R. Holt, Registered Agent, at 2200 Holt Road, Clarksville, Tennessee 37043.

III.

Dannie R. Holt, (hereinafter “Respondent Holt”) is a resident of the state of Tennessee, and is the signatory authority for Pleasant View Village. He is personally involved in the Pleasant View Village project in several different capacities. Service of process may be made on Respondent Holt at 2200 Holt Road, Clarksville, Tennessee 37043.

JURISDICTION

IV.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act.

V.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

VI.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the Department prior to discharging any substances to waters of the state, or to a

location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI).

VII.

The unnamed tributary to Sycamore Creek, described herein, is “waters of the state”, as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VIII.

On April 24, 2002, the division received a NOI and site map from the Respondents requesting coverage under the TNCGP. Respondent Holt Development was listed on the NOI as owner/developer of the site. Respondent Holt signed the NOI as a representative of the owner/developer and as the primary contractor. The Respondents were granted coverage under the TNCGP on April 29, 2002.

IX.

On November 11, 2002, division personnel investigated a complaint at the site and noted that the site was largely bare and lacked adequate Erosion Prevention and Sediment Control (EPSC) measures. The findings of this inspection were outlined in division correspondence to

Respondent Holt dated November 19, 2002. This correspondence also instructed Respondent Holt to maintain and periodically inspect the EPSC measures as required by the TNCGP.

X.

On March 10, 2003, division personnel investigated a complaint at the site and again noted that the site was largely bare and lacked adequate EPSC measures. The findings of this inspection were outlined in division correspondence to Respondent Holt dated March 10, 2003. This correspondence instructed Respondent Holt to install additional EPSC measures, maintain and inspect all EPSC measures, periodically inspect the receiving stream for evidence of soil run off from the site and take all necessary actions to prevent soil loss if the periodic inspections of the receiving stream revealed soil loss from the site

XI.

On December 1, 2003, division personnel investigated a complaint at the site and again noted a lack of adequate EPSC measures. Division personnel returned to the site on December 8, 2003, and noted that the detention basins observed during previous site visits had been backfilled.

XII.

On December 17, 2003, the division issued a Notice of Violation (NOV) to Respondent Holt for the violations observed during the December 1 and December 8, 2003, site investigations. The NOV instructed Respondent Holt to install effective EPSC measures within 7 days of receipt of the NOV and submit an updated Storm Water Pollution Prevention Plan (SWPPP) to the division within 10 days of receipt of the NOV. An updated SWPPP has not been received.

XIII.

On December 31, 2003, division personnel met Respondent Holt to discuss the EPSC measures at the site. The findings of this meeting were outlined in correspondence to Respondent Holt dated January 7, 2004. This correspondence instructed Respondent Holt to verify the size of a secondary detention basin and install additional EPSC measures.

XIV.

On March 19, 2007, division personnel met Respondent Holt to discuss a complaint received on March 6, 2007, and noted that an additional basin had been excavated but was not constructed in such a manner that would trap sediment on site. Division personnel also noted a lack of adequate EPSC measures down-gradient of the basin and noted heavy sediment deposits in the channel below the basin, leading to the unnamed tributary to Sycamore Creek. The NOC, SWPPP and EPSC inspection reports were not available on site as required by the TNCGP.

XV.

On March 20, 2007, the division issued a NOV to Respondent Holt for the violations observed during the March 19, 2007, complaint investigation.

XVI.

On April 3, 2007, division personnel met Respondent Holt to verify the extent of compliance efforts undertaken since the March 19, 2007, complaint investigation. Minor modifications had been made to the sediment basin, but these modifications were insufficient to trap sediment within the basin and the basin appeared to be undersized. The NOC, SWPPP, and EPSC inspection reports were not available on site as required by the TNCGP. Division personnel then assessed the extent of sediment deposition in the unnamed tributary to Sycamore

Creek and noted extensive sediment deposits up to two feet in depth, for a distance of approximately 1.4 miles downstream from the site.

XVII.

On April 12, 2007, the Division issued a NOV to Respondent Holt outlining the findings of the April 3, 2007, site investigation. The NOV pointed out the deficiencies of the sediment basin, the extent of sediment deposition in the unnamed tributary to Sycamore Creek and the TNCGP violations observed during the April 3, 2007 site investigation. The NOV instructed Respondent Holt to immediately install a sediment basin that would meet the requirements of the TNCGP, submit an updated SWPPP to the division with 15 days of receipt of the NOV and to comply with the remaining terms and conditions of the TNCGP.

XVIII.

On April 16, 2007, the Division received a complaint consisting of correspondence and photographs from an adjacent land owner. The photographs clearly showed sediment laden water flowing in the unnamed tributary to Sycamore Creek down stream of the site after a rain event.

XIX.

On May 9, 2007, division personnel met Respondent Holt to discuss the April 16, 2007, complaint. Respondent Holt stated that he was waiting on his consulting engineer to provide the updated SWPPP that the division had previously requested. Additional minor modifications had been made to the sediment basin, but these modifications were insufficient to retain sediment within the basin. Additionally, the NOC, SWPPP, and EPSC inspection reports were not

available on site. Respondent Holt stated that he felt that the sediment deposits in the unnamed tributary to Sycamore Creek were from natural erosion and therefore not his responsibility.

XX.

On May 11, 2007, the Division issued a NOV to Respondent Holt for the violations observed during the May 9, 2007, complaint investigation. The NOV instructed Respondent Holt to immediately install a sediment basin adequately sized and constructed to accommodate a 2 year, 24 hour storm event for each acre draining to the basin.

XXI.

During the course of investigating the activities of the Respondents, the division has incurred DAMAGES in the amount of ONE THOUSAND SEVEN HUNDRED NINETY EIGHT DOLLARS AND ELEVEN CENTS (\$1,798.11).

VIOLATIONS

XXII.

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondents have violated T.C.A. Sections §§ 69-3-108(b) and 69-3-114(a)-(b):

T.C.A. § 69-3-108(b) states, in part:

- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or

bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §§ 69-3-114(a)-(b) state:

- (a) It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.
- (b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part

By failing to furnish information requested in the NOV's dated December 17, 2003, and April 12, 2007, the Respondents have violated T.C.A. Section 69-3-114(b) as referenced above.

XXIII.

By causing a condition of pollution to the unnamed tributary of Sycamore Creek, the Respondents have violated T. C. A. Section 69-3-114(a).

T.C.A. § 69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XXIV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, James H. Fyke, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 30 days of receipt of this ORDER, submit an updated, NOI and SWPPP, showing the methods proposed to establish effective EPSC measures such that sediment is not allowed to leave the site or enter waters of the state. The EPSC measures shall be designed by a professional engineer licensed in the state of Tennessee or a landscape architect licensed in the state of Tennessee and shall be maintained until all land disturbance at the site is complete and erosion-preventive permanent cover is established. The Respondents shall submit this updated NOI and SWPPP for approval to the Water Pollution Control Manager in the Nashville Environmental Field Office (N-EFO) at 711 R.S. Gass Boulevard, Nashville, Tennessee 37243, and shall submit a copy to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243-1534.
2. The Respondents shall, within 14 days of written approval from the division, implement the measures contained in the approved SWPPP and shall submit photographic and written documentation that the approved measures have been implemented. This documentation shall be submitted to the N-EFO as shown in item 1 above.

3. The Respondents shall, within 30 days of receipt of this ORDER, submit a Corrective Action Plan (CAP) for the removal of the accumulated sediment from the unnamed tributary to Sycamore Creek. The Respondents shall submit the CAP for review and approval to the N-EFO as shown in item 1 above.
4. The Respondents shall, within 90 days of written approval, complete the actions outlined in the CAP, and submit photographic and written documentation within 7 days of the completion of the approved actions, to the division as shown in item 1 above.
5. The Respondents shall, within six months of receipt of this Order and Assessment, provide documentation of attendance and successful completion of the Department's Erosion Prevention and Sediment Control Workshop, for all employees who manage or oversee construction projects to the division as shown in item 1, above. Information may be found on the program website at <http://www.tnepsc.org/>.
6. The Respondents shall pay DAMAGES to the division in amount ONE THOUSAND SEVEN HUNDRED NINETY EIGHT DOLLARS AND ELEVEN CENTS (\$1,798.11).
7. The Respondents shall pay a CIVIL PENALTY of ONE HUNDRED FIFTY EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$158,500.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondents shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of FORTY FIVE THOUSAND DOLLARS (\$45,000.00).

- b. If the Respondents fail to comply with Part XXVIII, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THIRTY FIVE THOUSAND DOLLARS (\$35,000.00), payable within 30 days of default.
- c. If the Respondents fail to comply with Part XXVIII, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), payable within 30 days of default.
- d. If the Respondents fail to comply with Part XXVIII, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), payable within 30 days of default.
- e. If the Respondents fail to comply with Part XXVIII, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), payable within 30 days of default.
- f. If the Respondents fail to comply with Part XXVIII, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00), payable within 30 days of default.

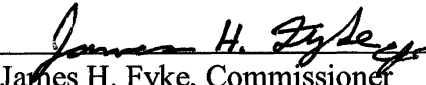
The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the

Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 25th day of October 2007.


James H. Fyke, Commissioner
Tennessee Department of Environment and
Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109 and 69-3-115, allow any Respondent to secure review of this ORDER AND ASSESSMENT. To secure review of this ORDER AND ASSESSMENT, the Respondent must file with the Director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this ORDER AND ASSESSMENT.

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER

AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation).

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with

the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to Devin M. Wells, Assistant General Counsel at the address listed below. All other correspondence shall be sent to Paul E. Davis, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.

A handwritten signature in black ink, appearing to read 'D. Wells', is written over a horizontal line.

Devin M. Wells
Assistant General Counsel
Tennessee Department of
Environment & Conservation
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Nashville, Tennessee 37243-1548